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JOSEPH F. SPANIOL, JR.  
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No. 89-310

In The  
**Supreme Court of the United States**  
**October Term, 1989**

JAY MANIFOLD, JUDY ROBERTS, TOM HANNA, MICHAEL D. LEWIS, ROY G. LIEBERMAN, MARSHALL E. COBB, JAMES CARTER, JOHN GIERINGER, THERESA WORLEY, GRETA S. BUZZARD, PETER M. KERR, CAROL JEAN TUCKER, THOMAS MARTIN EDELMAN, FRANKLIN M. NUGENT, MIKE HURLEY, GERALD GEIER, MICHAEL J. D'HOOGE, MIKE ROBERTS, a/k/a WARREN A. ROBERTS, III, AND THE LIBERTARIAN PARTY OF MISSOURI,

*Petitioners.*

vs.

ROY D. BLUNT, Secretary of State of the State of Missouri,

*Respondent.*

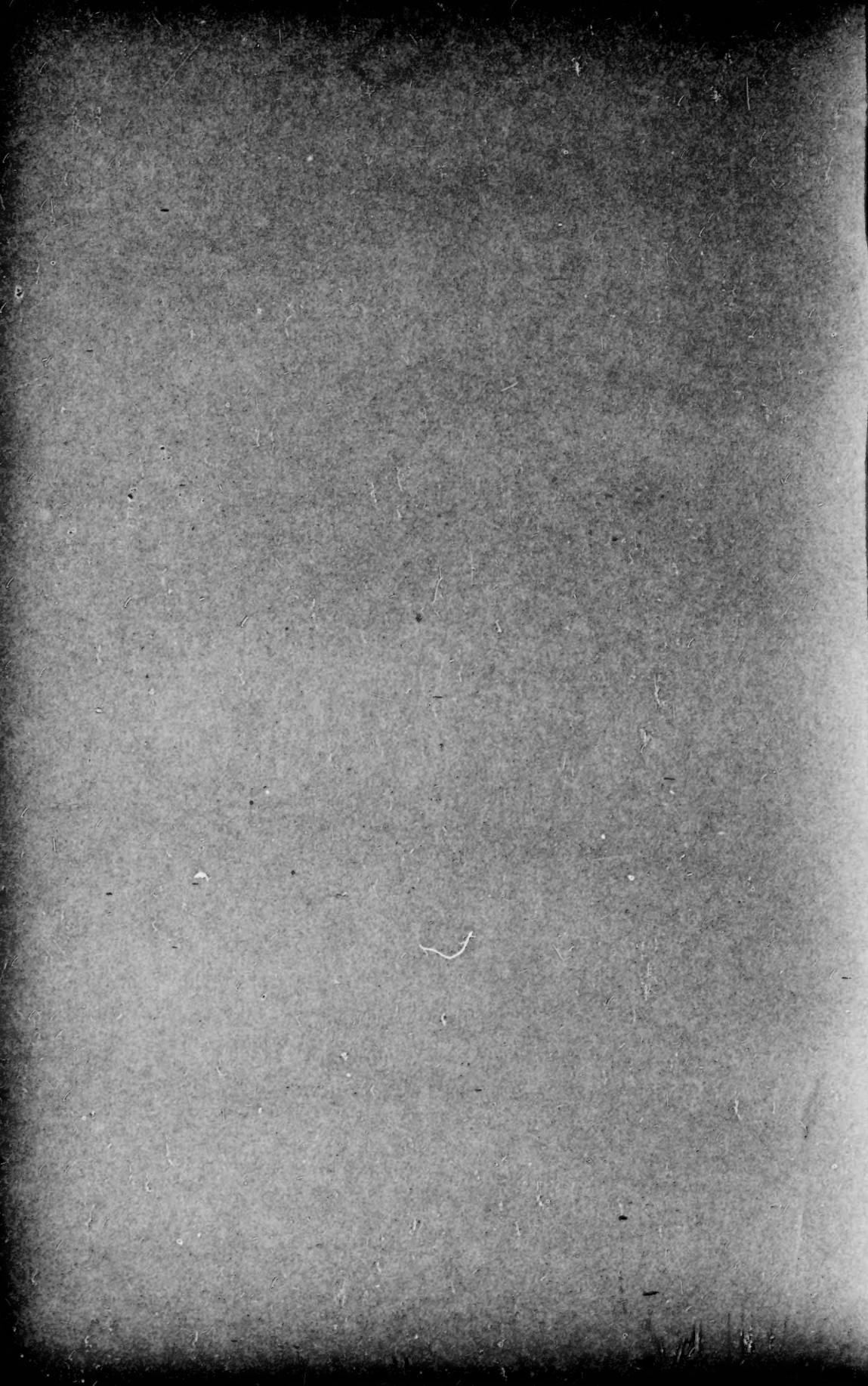
RESPONDENT'S BRIEF IN OPPOSITION TO  
PETITIONERS' PETITION FOR  
WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

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## QUESTIONS PRESENTED

1. Does the State of Missouri have a compelling interest in protecting the integrity of its election ballot by insuring there are qualified electors for every Presidential and Vice-Presidential candidate appearing on the ballot?
2. Is an easily-fulfilled statutory deadline for filing of declarations of candidacy for a new political party's presidential electors prior to printing of the state's election ballots in violation of the First and Fourteenth Amendments to the United States Constitution simply because a new political party failed to meet the deadline?

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## STATEMENT OF THE CASE

Petitioners initiated this action after respondent, Secretary of State of Missouri, declared the Libertarian Party's candidates for President and Vice-President of the United States ineligible to appear on Missouri's general election ballot. As an officer of the State of Missouri, respondent acted in compliance with § 115.327, RSMo 1986, which provides a petition "for the formation of a new political party shall include a declaration of candidacy for each candidate to be nominated by the petition. Each declaration of candidacy for the office of presidential elector shall be in the form provided in 115.399."

On August 1, 1988, the Libertarian Party filed its petition for formation of a new political party and declarations of candidacy for many offices, including the offices of President and Vice-President, but did not turn in the declarations of candidacy for Presidential electors at that time. The Libertarian Party filed a petition including sufficient signatures to allow its recognition as a new political party in Missouri for 1988, pursuant to § 115.315, RSMo 1986, and Libertarian candidates for several state offices, including Governor, Treasurer, Secretary of State, United States Senator, and United States Representative were qualified to appear on the general election ballot.

On September 12, 1988, petitioners filed their complaint in the United States District Court for the Western District of Missouri, Central Division. Ballots for absentee voters were required to be available no later than the sixth Tuesday (September 27, 1988) prior to the election. § 115.281, RSMo 1986. Given the time constraints involved, the matter was heard on September 16, 1988,

before the Honorable D. Brook Bartlett who on that date issued an order denying petitioners' motion for a declaratory judgment and injunction.

Petitioners filed a motion for injunction and expedited appeal to the United States Court of Appeals for the Eighth Circuit. On September 22, 1988, the court issued its order granting petitioners' motion for expedited appeal but denying petitioners' motion for injunction and affirming the order of the District Court. Petitioners then filed a petition for injunction in the United States Supreme Court which was denied by Mr. Justice Blackmun on September 28, 1988. Petitioners filed a petition for rehearing in the Eighth Circuit which was ruled moot by the filing of an opinion by a panel of the court on December 14, 1988. On December 23, 1988, petitioners - filed a second petition for rehearing en banc which was denied on March 13, 1989.

The general election was held November 8, 1988, and the names of the Libertarian candidates for President and Vice-President of the United States did not appear on Missouri's ballot. Despite the months that have passed since the election, respondent acknowledges that numerous cases have held a claim for ballot access is not rendered moot by the occurrence of an election. See, e.g., *Storer v. Brown*, 415 U.S. 724, 737, n.8 (1974); *Rosario v. Rockefeller*, 410 U.S. 752, 756, n.5 (1973).

The facts underlying the decision of the Eighth Circuit are set out in the court's opinion at Petitioners' Appendix B.

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## ARGUMENT

Petitioners challenge the validity, under the First and Fourteenth Amendments to the Constitution of the United States, of Missouri's statutory scheme relating to new and established political parties. Constitutional challenges to state requirements for candidate eligibility involve two areas of concern: The rights of individuals to associate for advancement of their political beliefs, and the rights of qualified voters to cast their votes effectively. *Anderson v. Celebrezze*, 460 U.S. 780, 787 (1983). In *Celebrezze*, this Court set out the factors for analysis in determining whether a state requirement is constitutional. The court must: (1) "consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate;" (2) "identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule;" and (3) "determine the legitimacy and strength of each of those interests" along with "the extent to which those interests make it necessary to burden the plaintiff's rights." *Id.*, 103 S.Ct. at 1570.

In this case the Libertarian Party candidates for President and Vice-President of the United States did not appear on Missouri's November 1988 election ballot. Petitioners failed to fulfill the requirement set out in § 115.327, RSMo 1986, of filing declarations of candidacy for presidential electors with their new party petition.

A writ of *certiorari* should not issue in this case, because Missouri's statutory scheme furthers compelling interests without unreasonably burdening new political

parties. In this case, Libertarian candidates were excluded from the ballot as a result of petitioners' act of omission rather than an unconstitutionally burdensome filing deadline.

In evaluating the State's interests, the proper test is " 'one of reasonableness.' " *Libertarian Party v. Bond*, 764 F.2d 538, 541 (8th Cir. 1985), quoting *Libertarian Party v. Florida*, 710 F.2d 790, 793 (11th Cir. 1983), cert. denied, 469 U.S. 831 (1984). The Seventh Circuit observed:

" . . . all of the cases about the regulation of elections from *Williams v. Rhodes*, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968), through *Anderson [v. Celebrezze*, 460 U.S. 780, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983)] ask only whether the state's justification is logically sound and consonant with common experience."

*Citizens for John W. Moore v. Board of Election Commissioners of the City of Chicago*, 794 F.2d 1254, 1257 (7th Cir. 1986).

The Eighth Circuit concluded there are compelling State interests which are furthered by Missouri's election laws. (Pet. App. 17). It is a fundamental obligation of the States, imposed by Article II, Section 1, Clause 2 of the Constitution of the United States, to provide presidential electors:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector."

In furtherance of this obligation, Missouri's legislature enacted § 128.010, RSMo 1986, which provides that the electoral districts for elections for the offices of President and Vice-President of the United States will be the same as the Congressional districts into which the state is divided, with the same number of Presidential electors as there are districts.

Although Presidential electors do not appear on Missouri ballots, the significant role they play cannot be mistaken. Section 115.243.1, RSMo 1986, provides: "The names of candidates for presidential electors shall not be printed on the ballot but shall be filed with the Secretary of State in the manner provided in § 115.399." Any vote cast for candidates for President and Vice-President "shall be a vote for their electors." Section 115.243.2, RSMo 1986. Further, when Presidential and Vice-Presidential candidates are to be elected, the official ballot for the general election must include instructions stating "a vote for candidates for President and Vice-President is a vote for their electors." Section 115.243.3, RSMo 1986.

The integrity of Missouri's general election ballot is protected by the requirement that Presidential electors file with the Secretary of State a declaration of candidacy. Without such a declaration, there is no assurance that there are capable persons willing to serve as electors and carry out the wishes of Missouri voters in the national electoral college. Thus, because of Missouri's requirements that Presidential electors file declarations of candidacy, when the Secretary of State certifies a candidate's name to appear on the Presidential ballot, he is assuring the voters that the candidate is qualified to serve and that their vote for that candidate is meaningful.

This Court has repeatedly recognized the states' rights in regulating the conduct of elections. "[A]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Anderson v. Celebrezze*, *supra*, 103 S.Ct. at 1569, quoting *Storer v. Brown*, 415 U.S. 724, 730 (1974). It has long been accepted that there is "an important state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization's candidate on the ballot – the interest, if no other, in avoiding confusion, deception, and even frustration of the democratic process at the general election." *Jenness v. Fortson*, *supra*, 403 U.S. 431, 441-442 (1971). See also *Munro v. Socialist Workers Party*, 479 U.S. 189 (1986). Frivolous candidacies result in overcrowding of the ballot. Such "ballot clutter confuses voters, makes it difficult for them to spot their favored candidates' names and creates an inordinate and unfair advantage for the candidates near the top of the ballot." *Consumer Party v. Davis*, 778 F.2d 140, 142, n. 1 (3rd Cir. 1985). Missouri's requirements protect all the voters of the state by assuring a candidate whose name appears on the ballot has fulfilled requirements to seek office.

These State interests have been accepted without question, and this Court has "never required a State to make a particularized showing of the existence of voter confusion, ballot overcrowding, or the presence of frivolous candidacies prior to the imposition of reasonable restrictions on ballot access." *Munro v. Socialist Workers Party*, *supra*, 479 U.S. at 194-195.

Of course, the compelling interest of the state does not end this Court's inquiry. Whenever a question of ballot access arises, the rights of individuals to associate for advancement of their political beliefs and the rights of qualified voters to cast their votes effectively must also be considered. *Anderson v. Celebrezze, supra*, 460 U.S. at 787.

It is necessary to determine the legitimacy and strength of each of the interests of the state along with the extent to which the interests make it necessary to burden the plaintiffs' rights. *Id.*, 103 S.Ct. at 1570. Upon completion of this analysis, the only possible conclusion is that which was reached by the District Court and affirmed by the Eighth Circuit, namely, that Missouri's election law does not impermissibly burden the rights of individuals.

The filing deadlines for declarations of candidacy of Presidential electors are different for new parties and established parties. Section 115.399.2, RSMo 1986, provides: "Not later than the third Tuesday prior to each Presidential election, the state committee of each established political party shall certify in writing to the Secretary of State the names of its nominees for Presidential electors." However, also unlike new political parties, Missouri's statutes provide in § 115.625, RSMo 1986, for the convention of the state committee of an established political party which fulfills several purposes, including nominating Presidential electors. With an established party the Secretary of State has assurance that there will be Presidential electors for their candidate, and there is no risk in printing these names on the ballot. However, for new political parties, it is necessary that they file their declarations of candidacy for Presidential electors prior to the

printing of the ballot, to insure that there will be Presidential electors and protect the state's interest in allowing voters an opportunity to cast a meaningful vote.

This Court recognized in *Jenness v. Fortson, supra*, that "there are obvious differences in kind between needs and potentials of a political party with historically established broad support, on the one hand, and a new or small political organization on the other." *Id.*, 403 U.S. at 441-442. A state does not necessarily violate the constitution when it recognizes these differences and provides different routes to the ballot. "Sometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike." *Id.*

As it was previously discussed, this Court has repeatedly recognized the states' interest in requiring a preliminary showing of substantial support before printing a political organization's candidate on the ballot. For an established party, such support is shown through the state committee structure. "But we can hardly suppose that a small or a new political organization could seriously urge that its interests would be advanced if it were forced by the State to establish all of the elaborate statewide county-by-county, organizational paraphernalia required of a 'political party'. . ." *Id.*, 403 U.S. at 441.

Thus, Missouri's statutes, rather than burdening a newly forming political party with the requirements of a statewide mechanism equal to established parties, merely seek a showing of support through the statutory requirements of the filing of a petition and the filing of declarations of candidacy for all candidates, including presidential electors. This requirement does not unduly

restrict the rights of voters and candidates of a new political party, when it is considered in the context of the state's interests in assuring adequate support for a candidate and fulfillment of constitutional requirements of presidential electors before the candidate's name is placed on the ballot.

Further, the District Court concluded that by having petitions and declarations of candidacy filed simultaneously for a new party, the State's completion of the various stages of the pre-election process are significantly furthered. As the District Court noted in observing the filing of the New Alliance Party, which petitioned only for placement of presidential and vice-presidential candidates on a general election ballot, in such instances a later filing date for declarations of candidacies of presidential electors would necessitate a complete check of the validity of all signatures when such could have been avoided if it were found that the requirement for presidential electors had not been fulfilled.

Petitioners dispute this finding by the Court, arguing that signatures are routinely validated before a review of declarations of candidacy is made (Pet. at 19). Petitioners fail to acknowledge that in the case of the Libertarian Party, candidates for many offices were involved and signatures had to be checked for all offices. The lower court's finding of administrative convenience is based on instances where a new party files only for the offices of President and Vice-President.

This Court need not address Appellant's assertion that in 1984 nothing was made of the fact that the Libertarians had not turned in their Presidential electors or

declarations of candidacy in 1984 (Pet. at 19). In 1984, the Libertarian Party was 52 signatures short in the first district and 742 signatures short in the third district, failing to meet its statutory requirement of 2 per cent of the signatures in each of the five Congressional Districts. *Libertarian Party v. Bond, supra*, 767 F.2d at 540. In 1984, the signature requirement was not met. Therefore, there was no need to address the additional failure to provide declarations of candidacy for presidential electors.

Petitioners attempt to misconstrue the court's opinion where it states, "Once a new party meets the signature requirement, it need do nothing more in order to get its candidates on the ballot." *Id.*, 764 F.2d at 542. When this quotation is read in its proper context, it is apparent that the court of appeals was referring to all the requirements of the statute and comparing them with requirements found in other states such as those declared unconstitutional in *Williams v. Rhodes*, 393 U.S. 23, 36-37 (1968), where "(even after meeting signature requirement, new party was required to engage in elaborate primary election machinery to get its candidates on the ballot)." *Libertarian v. Bond, supra*, 764 F.2d at 542; (Pet. App. at 12).

The only possible conclusion in this case is that Missouri's requirement that new parties file their presidential electors with the nominating petition is not burdensome (Pet. App. at 19). As noted by the court of appeals, representatives of the Libertarian Party had been informed by telephone at least one week before the August 1 filing deadline that § 115.327, RSMo 1986 requires filing of declarations of candidacy for presidential electors. (Pet. App. at 8, n.3). "It would seem that if a national candidate is at all serious about obtaining votes

from a particular state, he or she should be able to discover and comply with reasonable state election requirements that do not impermissibly impinge on constitutional rights." *LaRouche v. Monson*, 599 F.Supp. 621, 629-630 (D.Utah 1984).

In this case, the candidates for the Libertarian Party were able to meet the alleged unconstitutional deadline with respect to all requirements except the filing of the presidential electors' declarations of candidacy. Based on the facts provided, it is apparent that the absence of Libertarian candidates for president and vice-president from the Missouri ballot is not the result of an early deadline, but rather the act of omission by the Libertarian Party in failing to have their presidential electors declare their candidacy. The present case can be equated to the situation presented in *Unity Party v. Wallace*, 707 F.2d 59 (2nd Cir. 1983).

In that case, the Unity Party filed with the New York State Board of Elections on September 7 a petition with sufficient signatures to qualify its candidate for the United States Senate race. The election board's director sent a letter to the candidate saying the petition was received and that September 10 was the last day to file an acknowledgment of candidacy required for new and independent parties. A letter was dated and postmarked September 9, but did not reach the board of elections by the deadline. On September 20, the director of elections informed the candidate of his failure to comply with the requirement and the fact that his name would not appear on the ballot. *Id.*, 707 F.2d at 60.

The court in *Unity Party* reached the same conclusion warranted by the facts of this case: "Nothing before us indicates that compliance with the acknowledged acceptance requirement is difficult. There is no evidence in the record that compliance is time-consuming, complex or imposes any financial hardship." *Id.*, 707 F.2d at 62. Only the "careless or inadvertent failure to follow the mandate of the statute" gives rise to the complaint. *Id.*, citing *Matter of Hutson v. Bass*, 54 N.Y.2d 772, 774, 443 N.Y.S.2d 57, 426 N.E.2d 749 (1981). Although challenged by the plaintiffs, New York's interest, like Missouri's, in maintaining the integrity of its election was upheld, because the acknowledgment requirement prevented a fraudulent candidacy. The court recognized that while nominees from major political parties ordinarily were designated and held out to the public at the party's state conventions, the same could not be said for new party and independent candidates. *Id.*, 707 F.2d at 63-64. "Absent an acknowledged acceptance requirement, the States' ballots would be unnecessarily crowded and confused. . . ." *Id.*

Because Missouri's statutes further compelling state interests without unreasonably burdening new political parties, the petition for writ of certiorari should be denied.

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## CONCLUSION

In view of the foregoing, the respondent submits that petitioner's petition for a writ of certiorari should be denied.

Respectfully submitted,

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